

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 13 DEC 2005

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Applicant's or agent's file reference 6.30.3260PCT	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/CA2004/001580	International filing date (<i>day/month/year</i>) 27 August 2004 (27-08-2004)	Priority date (<i>day/month/year</i>) 27 August 2003 (27-08-2003)
International Patent Classification (IPC) or national classification and IPC IPC(7): B65B 43/26, B65B 61/00, B65B 7/16		
Applicant LABATT BREWING COMPANY LIMITED ET AL		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>6</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of <u>4</u> sheets, as follows:</p> <p style="padding-left: 40px;"><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p style="padding-left: 40px;"><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. 1 and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input checked="" type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>		
Date of submission of the demand 25 March 2005 (25-03-2005)	Date of completion of this report 1 December 2005 (01-12-2005)	
Name and mailing address of the IPEA/CA Canadian Intellectual Property Office Place du Portage I, C114 - 1st Floor, Box PCT 50 Victoria Street Gatineau, Quebec K1A 0C9 Facsimile No.: 001(819)953-2476	Authorized officer Emilie Clément (819) 953-8641	

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/CA2004/001580

Box No. I Basis of the report

1. With regard to the language, this report is based on:
 - ☒ the international application in the language in which it was filed
 - ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of:
 - ☐ international search (Rules 12.3(a) and 23.1(b))
 - ☐ publication of the international application (Rule 12.4(a))
 - ☐ international preliminary examination (Rules 55.2(a) and/or 55.3(a))
2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:
 - ☐ the international application as originally filed/furnished
 - ☒ the description:
 - ☒ pages 1-10 as originally filed/furnished
 - ☐ pages* received by this Authority on _____
 - ☐ pages* received by this Authority on _____
 - ☒ the claims:
 - ☐ pages as originally filed/furnished
 - ☐ pages* as amended (together with any statement) under Article 19
 - ☒ pages* 11 received by this Authority on June 27, 2005 (2005.06.27)
 - ☐ pages* received by this Authority on _____
 - ☒ the drawings:
 - ☒ pages 1/3-3/3 as originally filed/furnished
 - ☐ pages* received by this Authority on _____
 - ☐ pages* received by this Authority on _____
 - ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
 - ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of those sheets may be marked "superseded."

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITYInternational application No.
PCT/CA2004/001580**Box No. II Priority**

1. ☐ This report has been established as if no priority had been claimed due to the failure to furnish within the prescribed time limit the requested:

☐ copy of the earlier application whose priority has been claimed (Rule 66.7(a)).
☐ translation of the earlier application whose priority has been claimed (Rule 66.7(b)).
2. ☐ This report has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rule 64.1). Thus for the purposes of this report, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

The priority document has been found to provide support for the claims in the instant application.

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/CA2004/001580**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	<u>1 to 4</u>	YES
	Claims	<u>None</u>	NO
Inventive step (IS)	Claims	<u>1 to 4</u>	YES
	Claims	<u>None</u>	NO
Industrial applicability (IA)	Claims	<u>1 to 4</u>	YES
	Claims	<u>None</u>	NO

2. Citations and explanations (Rule 70.7)

Reference is made to the following document:

D1: US 3,967,434 (6 July 1976)**D2:** US 6,038,789 (21 March 2000)**Novelty (N) :** Claims 1 to 4 are novel in the sense of PCT Article 33(2) having regard to D1.

Document D1, which is considered to be the most relevant prior art with respect to independent claims 1 to 4, teaches a method for packing articles into a carton, said method comprising the steps of:

- manipulating a carton flat having flaps adapted to seal an opening into the carton into an erected open condition;
- transporting said carton to a packing station;
- filling said carton by inserting a complement of articles through said opening into said carton;
- manipulating said flaps so that they overlie the articles in the carton; and
- securing the flaps together to seal the carton.

Moreover, document D1 teaches a packaging machine adapted to receive a carton flat having sealing flaps, erect the carton flat into an open carton, fill and seal the open carton, the machine comprising:

- a means for erecting the carton blank into a carton having an opening, closurable by said sealing flaps for the insertion of articles;
- means for filling said carton with a complement of articles;
- means to manipulate said flaps to overlie said articles; and
- means to secure said flaps together to seal said carton.

The distinguishing feature of claims 1 to 4 regarding the disclosure of D1 is the moistening of any warped closure flaps of said carton in order to overcome distortion by dehydration.

Thus, claims 1 to 4 meet the requirements of PCT Article 33(2) having regard to novelty, as the above cited document does not disclose the additional features recited by these claims.

Inventive step (IS) : Claims 1 to 4 involve an inventive step in the sense of PCT Article 33 (3).

D2 is concerned with paper manufacturing wherein during drying operations moistening is provided with steam boxes and moistening devices for controlling the curling of paper. This ensures that uniformity of drying is achieved so that the paper is not predisposed towards curling in the first place. Hence, the treatment suggested by D2 is not proposed as a means for correcting curling once it has manifest in the end product application.

Therefore, it is considered that a person skilled in the art faced with the problem of curled cartons during assembly and sealing thereof would not be lead to the teachings of D2 in order to overcome the problem.

Thus, claims 1 to 4 meet the requirements of PCT Article 33(3) having regard to inventive step, as the above cited documents, whether considered singly or in combination, do not teach the additional features recited by these claims.

Industrial applicability (AI) : Claims 1 to 4 are considered to be industrially applicable in the sense of PCT Article 33(4).

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITYInternational application No.
PCT/CA2004/001580**Box No. VII Certain defects in the international application**

The following defects in the form or contents of the international application have been noted:

The description does not comply with **PCT Rule 11.13(l)**. Reference signs not mentioned in the description shall not appear in the drawings, and vice versa. In the description (page 9, lines 11, 19 and 20) "carton 100" should read "carton 27" since reference character (100) does not appear in the drawings.

The description does not comply with **PCT Rule 11.13(m)**. The same features, when denoted by reference signs, shall, throughout the entire application, be denoted by the same signs. For example, on page 6 the bottom wall section is referred to by (11) while on page 7 line 3 the securing flap is also referred to by (11). Similarly, on page 6, the bottom wall section is referred to by (13) while on page 7 line 6 the securing flap is also referred to by (13). Furthermore, on page 6, line 16 of the description it should read "sections, 10, 11, 12 and 13" rather than "sections, 10, 22, 12 and 13" to be consistent throughout the application. Reference character (22) refers to the erection or set-up station.

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

Claim 2 is indefinite and does not comply with PCT Article 6. The claim recites a method according to claim 1 for treating an erected carton while claim 1 recites a method for treating a carton. As presented, it is not clear whether or not claim 2 refers to the carton mentioned in claim 1.

Claim 2 does not comply with PCT Article 6 for failing to clearly define the subject matter for which protection is sought. The term "distraction" as would be understood by one skilled in the art, would be akin to the definition listed in the Merriam-Webster Dictionary: "to draw or direct (as one's attention) to a different object or in different directions at the same time". However, it appears that the term the applicant intended to put forth is "distortion" which, according to the definition in the Merriam-Webster Dictionary, is "the quality of twisting out of natural, normal, or original shape or condition" and is therefore more appropriate to the context.

Claims 2 and 3 are indefinite and do not comply with PCT Article 6. The dependent claims 2 and 3 repeat the step of treating the flap with sufficient moisture as recited in claim 1 without further defining it, thus leading to redundancy in the claims. Therefore, the above mentioned step should be removed from the dependent claims. Furthermore, claim 3, which recites additional steps to the method of claim 1, should place these steps in the proper sequence relative to the step of treating the flap with sufficient moisture which was already defined in claim 1.

Claim 3 is indefinite and does not comply with PCT Article 6. It is noted that while claim 1 recites a method for treating a carton, claim 3 recites a method according to claim 1 for packing articles into a carton thereby causing confusion as to the scope of the subject matter for which protection is sought. The dependent claims should have the same purpose as the independent claim upon which they depend.

Claim 3 does not comply with PCT Article 6 for failing to clearly define the subject matter for which protection is sought. The term "wherein" in the expression "manipulating a carton flat having flaps adapted to seal an opening into the carton *wherein* an erected carton open condition moisturizing any..." is incorrect and should read "when in". Also, there should be a comma before "moisturizing" for better clarity of the claim.

Claims 3 and 4 do not comply with PCT Article 6. The above claims contain the following terms which lack antecedents: "said process" (claim 3), "said container" (claim 3) and "the carton blank" (claim 4). It is noted that the same term should be used to define the same element throughout the claims.

Claim 4 does not comply with PCT Article 6 for failing to set forth the subject matter in clear and explicit terms. The term "flats" in the expression "means to secure said *flats* together..." is incorrect and should read "flaps".

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CLAIMS:

- (1) A method for treating a carton having a flap member distorted by dehydration comprising applying sufficient moisture to said member to cause re-hydration thereof.
- (2) A method according to Claim 1 for treating an erected carton which has at least one sealing flap member distorted through dehydrating thereby obstructing an opening in said carton, said method comprising treating said flap with sufficient moisture to re-hydrate same and negate said distraction.
- (3) A method according to Claim 1 for packing articles into a carton, said process comprising manipulating a carton flat having flaps adapted to seal an opening into the carton wherein an erected open condition moisturizing any warped closure flaps to negate said warp during transport of said carton to a packing station where it is filled by inserting a complement of articles through said opening into said container, manipulating said flaps so that they overlie the articles in the carton and securing the flaps together to seal the carton.
- (4) A packaging machine adapted to receive a carton flat having sealing flaps susceptible to warping when dehydrated, erect the carton flat into an open carton, fill and seal the open carton, the machine comprising a means for erecting the carton blank into a carton having an opening, closurable by said sealing flaps for the insertion of articles; means for moistening the sealing flaps to counteract or prevent any warping of said flaps which would hinder insertion of said articles into said carton; means for filling said carton with a complement of articles; means to manipulate said flaps to overlie said articles; and means to secure said flats together to seal said carton.